IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 8TH FEBRUARY 2007 / 19TH MAGHA 1928

WP(C).No. 25321 of 2006(M)

PETITIONER:

M.R.SASIDHARAN NAIR,
H.S.A.(MALAYALAM), GOVT. V.H.S.S. KAIPATTOOR,
KAIPATTOOR P.O., PATHANAMTHITTA.

BY ADV. SRI.B.GOPAKUMAR
SMT.CHINCY GOPAKUMAR

RESPONDENTS:
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1. THE DIRECTOR,
HIGHER SECONDARY EDUCATION,
HOUSING BOARD BLDGS., THIRUVANANTHAPURAM.

2. STATE OF KERALA,
REP. BY THE SECRETARY TO GENERAL EDUCATION DEPT.,
SECRETARIAT, THIRUVANANTHAPURAM.

3. JACOB P.I., G.H.S.S., SADANANDAPURAM,
SADANANDAPURAM P.O., KOTTARAKKARA,
KOLLAM-691 550.

BY GOVERNMENT PLEADER SRI. A.J. VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 25321/2006

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF THE ADVICE MEMO NO. Q3/1211/79 DT. 6/10/81 OF THE KERALA PSC, KOLLAM.

EXT.P2. COPY OF THE APPOINTMENT ORDER ISSUED BY THE DY. DIRECTOR OF EDUCATION IN ORDER NO. 17366/81 DT. 19/10/81.

EXT.P3. COPY OF THE CERTIFICATE DT. 10TH JUNE, 2000.

EXT.P4. COPY OF THE APPLICATION DT. 8/8/05.

EXT.P5. COPY OF THE EXTRACT OF THE PROVISIONAL SENIORITY LIST.

EXT.P6. COPY OF THE REPRESENTATION DT. 25/4/2006.

EXT.P7. COPY OF THE ORDER NO. AD. B2/9722/05/HSE DT. 15/6/2006.

[True Copy]

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K. M. JOSEPH, J.

W.P.C. NO. 25321 OF 2006 M

Dated this the 8th February, 2007

JUDGMENT

Petitioner challenges Ext.P7 as illegal and void, to the extent to which it denies due rank and seniority to the petitioner. He also seeks a direction to first respondent to fix his due rank and seniority for appointment as HSST (Malayalam) by transfer, taking into account his entire continuous service as Primary School Teacher and High School Teacher put together.

2. Case of petitioner, in brief, is as follows:

Petitioner was originally appointed as P.D. Teacher/Junior Malayalam Teacher as per advice of the Public Service Commission and pursuant to Ext.P2. He joined duty with effect from 29.10.1981. He was promoted as HSA (Malayalam) with effect from 29.10.1998. He was working continuously right from 29.10.1981 and has put in continuous service of twentyfour years, ten months and twentyfive days. Petitioner is a Post Graduate with Master Degree in Arts with second class in

Malayalam Language and Literature, together with Bachelor's Degree of Education in second class with optional Subject as Malayalam. He has also passed SET conducted by Government of Kerala in June, 2000 as is evident from Ext.P3. While so, he submitted Ext.P4 application dated 8.8.2005 pursuant to the Notification dated 30.5.2005 for appointment as HSST. Ext.P5 is the provisional seniority list of HSA and UPSA/LPSA as on 31.7.2005 for appointment by transfer as HSST/HSST (Junior). Petitioner submitted his objection against his rank shown as 393 as he has continuous service from 29.10.1981. Ext.P6 is the objection. Ext.P7 is the final seniority list which is impugned. According to petitioner, Ext.P7 is drawn up on the basis of the appointment of petitioner as HSA alone could be taken into account. It is his complaint that had Exts.P5 and P7 been prepared on the basis of his continuous service from 29.10.1981, he would have been ranked at Sl.11 in Ext.P7. Petitioner has impleaded the person ranked at Sl.No.11 as the third respondent. No doubt, petitioner has not carried out any paper publication as

such.

3. Heard Shri B. Gopakumar, learned counsel appearing on behalf of petitioner and the learned Government Pleader. A Counter Affidavit has been filed on behalf of first respondent, Director of Higher Secondary Education, wherein it is, inter alia, stated that as per the Special Rules, for appointment to the post of HSST/HSST (Junior), it is clearly specified that appointment to the post of HSST has to be made by appointment by transfer of qualified HSST (Junior) and it is in the absence of HSST (Junior) alone, twentyfive per cent of vacancies shall be filled up by transfer from qualified HSAs. In the absence of qualified HSAs, qualified UPSA/LPSA shall be considered, it is stated. It is stated that there are two separate lists of HSAs and PD Teachers and the service of the two categories cannot be clubbed together. Petitioner had worked as PD Teacher till 18.11.1998 and he was promoted as HSA on 19.11.1998.

4. Learned counsel for petitioner would contend that there is absolutely no basis for not including the service of petitioner

as PD Teacher till 1998. It is submitted that PD Teacher is also eligible to be promoted as HSST. He relied on the Government Order dated 13.5.1998 wherein it is provided that twemtyfive per cent of the vacancies of HSST are reserved for appointment of qualified HSAs and PD Teachers and the remaining vacancies are to be filled up by direct recruitment. He would, therefore, contend that there can be only one category of Teachers, namely HSAs and PD Teachers and, therefore, seniority cannot be determined by taking into consideration the date of appointment as HSA alone and the entire service as Prmary School Teacher of a Teacher who is appointed as HSA is not to be excluded. He would also rely on the following three decisions:

1) Gopalakrishna Pillai and Another v. State of Kerala and Others (1992 (2) ILR Ker. 67).

There, the question arose as to validity of the Rules in question. Apart from that, the question was whether the State was correct in taking the view that the Chief Medical Officer (Ayurveda) has preference over the Senior Medical Officer

(Ayurveda) and Senior Medical Officer (Specialist) for promotion to the cadre of District Medical Officer. The Court took the view that person who is having longer service must be promoted to the post of DMO. The Court, in particular, noted that a Senior Medical Officer (Specialist)/Senior Medical Officer (Ayurveda)/Chief Medical Officer (Ayurveda) are on the same scale of pay and turned down the plea of Government based on Rule 28(b)(7) in this regard. But, here, it is to be noted that the Rule in question with which we are concerned, specifically provides that for appointment to the post of HSST, preference is given to HSA and only in the absence of HSA, the Primary School Teacher is to be considered. This means that Primary School Teachers are excluded as long as there are qualified HSAs available for filling up the vacancies. The Rules are also not in challenge.

2) Balakrishnan Nambiar and Others v. State of Kerala and Others (1978 (1) ILR Ker. 93).

There the question arose whether the unqualified approved

service can be taken into consideration for determining seniority under Rule 27. That is a case where the question arose in the context of the following short facts:

Petitioners were appointed as untrained teachers under a Scheme. The Schools were taken over. The Court found that the petitioners therein were entitled to invoke Rule 27 of the KS & SSR and it was found that it was Rule 27 which applies. I do not think that the facts of the case which arose for consideration can be likened to the fact situation available in this case and hence no sustenance can be drawn by the petitioner from the said decision.

3) Sreenarayanan Elayath v. K.S.E.B. (2005 (1) KLT 644).

Therein, the learned Single Judge was considering the question under Rule 28(b)(i), Note (vi) and (vii). The Court proceeded to hold that when there are more than one feeder category carrying different scales of pay, there can be preference to the category with higher scales of pay as against length of

service, in the matter of promotion to higher post. I do not see how this decision can be of any assistance to the petitioner.

5. Learned Government Pleader would contend that the matter falls to be considered and decided on the terms of Rule 27 of KS & SSR. Petitioner is admittedly HSA from 1998. Petitioner is entitled to be considered for appointment as HSST in his capacity as HSA and it is the seniority which the petitioner has in the cadre of HSA which determines the issue. It is to be decided with reference to Rule 27 of the KS & SSR and, therefore, the petitioner will have seniority from the date of his appointment as HSA. Counsel for petitioner has a case that on a perusal of Rule 27, it refers to "service" and, therefore, it is the appointment to the service as PD Teacher in 1981 that should be taken into consideration for determining seniority even in the cadre of HSA.

6. I am unable to accept the contention of petitioner. Rule 27, no doubt, refers to the word "service". But, it is important to notice that it refers to seniority with reference to categories.

Here, the cadre with reference to which seniority is to be considered is the cadre of HSA. In such circumstances, my understanding of the Rule is that the Rule contemplates seniority in the cadre of HSA to be determined with reference to the date of appointment to that cadre. A HSA is entitled to appointment as HSST to the exclusion of a Primary School Teacher. Therefore, the Primary School Teacher and the HSA are two different categories. Therefore, the seniority of HSA is to be determined with reference to Rule 27 and it is to be determined with reference to the seniority in the category, namely in this case the category of HSA. If that be so, I fail to understand how the petitioner can seek to reckon his service as Primary School Teacher from 1981 for determining seniority in the cadre of HSA. In fact, two separate lists are drawn up, namely, list of HSA and list of UPSA strictly in keeping with the requirement of the Rule providing for two categories, one having preferential right and the other having a right only in the absence of qualified hands in the first category. Petitioner does not have a

case that he would have got promotion in the category of Primary School Teacher. If that is so, petitioner's claim can only to be rested on his claim under the category of HSA. The seniority in that category cannot be determined with reference to the service rendered in the category of Primary School Teacher.

The Writ Petition fails and it is dismissed.

K. M. JOSEPH, JUDGE

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